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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re the Marriage of TRUDE and TROY VENNEWITZ.	
TRUDE VENNEWITZ, Appellant, v. TROY VENNEWITZ, Respondent.	C037671 (Super. Ct. No. 99FL02045)

Trude Vennewitz (Mother) appeals from the trial court's ruling regarding the visitation rights of Troy Vennewitz (Father) with the couple's minor daughter.

Mother petitioned the court to allow her to move from the Sacramento area to Chicago, Illinois. The trial court allowed Mother and daughter to move away, but granted Father liberal visitation rights, including the entire summer vacation.

Additionally, the court required Mother to pay the cost of transporting the child to visit Father. Mother claims the trial court abused its discretion in ordering the substantial amount of visitation, and in requiring her to pay the entire cost of transportation. We shall affirm the resulting judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Mother and Father married in December 1993. They separated in February 1999. Their only child, a daughter, was born in October 1994.

Shortly after separation, the parties stipulated to a custody agreement awarding joint legal custody, and primary physical custody to Mother, with Father having visitation eight hours during the week plus approximately half of each weekend. The terms of the stipulation were incorporated into a court order. The court order also referred the parties to Family Court Services (FCS) for mediation of custody and visitation issues.

Trial was set for October 19, 2000, with a settlement conference to be held on October 10, 2000. On August 8, 2000, Mother filed an ex-parte request for modification of custody and visitation, and requested she be allowed to relocate with the child to Illinois. Mother requested referral to FCS to address the move and a parenting plan for Father. The court denied the

ex-parte application, but referred the parties to FCS for a report to be prepared for the trial.

The FCS report, dated September 28, 2000, contained two sets of recommendations. The first set consisted of recommendations in the event Mother chose to move to Illinois. The second set consisted of recommendations in the event Mother chose to stay in the Sacramento area.

If Mother chose to move, FCS recommended Father have sole physical custody with parenting time to Mother as follows: Christmas vacation; Easter vacation; and all of summer vacation, with the exception of one week after school ends and one week before school begins. FCS recommended the parents determine how the cost of travel would be shared.

If Mother did not choose to move, FCS recommended the parents share physical custody in such a manner as to assure frequent and continuing contact with both parents. FCS recommended Father have parenting time on Mondays and Wednesdays from 3:00 p.m. to 8:00 p.m., and every first, third, and fifth weekend from Friday at 3:00 p.m. to Sunday at 6:00 p.m. FCS recommended the parties adhere to the existing parenting schedule with regard to holidays.

Trial on the issues of custody and visitation and Mother's proposed move were bifurcated from the issues of support,

property division, and attorney fees. The trial on the move, custody, and visitation was held first.

The court found Father had maintained a "consistent and active presence in the child's life." Father had the child two days each week from 3:00 p.m. to 8:00 p.m., in addition to the first, third and any fifth weekend of each month. The court concluded this amounted to parenting time of approximately 25 percent.

The trial court found Mother's primary connection to Chicago was her friend, who would be able to rent her a house at a reasonable cost. The court noted Mother was employed as a medical transcriptionist with Medquist, Inc., in Sacramento. Medquist also had an office in Chicago, and Mother could obtain a transfer to the Chicago office. Mother also expressed a desire to work as a personal trainer in Chicago. Neither of Mother's parents lived in Chicago. Mother had some uncles, aunts, and cousins in Chicago, but did not have consistent contact with them. The court found Mother had given "little, if any, thought to the negative effect her proposed move [would] have on the child's relationship with her Father." The court found Mother's reasons for moving were not compelling, and were not for the child's benefit. The court found the move was not in bad faith or intended to frustrate Father's contact with the child, but that the move was not necessary.

Because the move was not in bad faith, the court granted Mother's request to relocate, conditioned on Mother paying the full cost of transportation for the child to visit Father. The court ordered visitation to Father as follows: (1) each spring break for nine days; (2) 10 weeks each summer; (3) each Thanksgiving vacation; and (4) half of each winter break.

I
Appeal from Non-Appealable Order

Father urges us to dismiss this appeal because it is not from a final order. In fact, there is neither a formal order nor judgment in the record. The notice of appeal, filed February 13, 2001, purported to appeal from the order of the court entered on December 13, 2000. On December 13, 2000, the court filed its "Ruling on Submitted Matter." The ruling specifically directed Mother's attorney to prepare the formal order. No formal order appears in the record. However, a final judgment, which incorporated the rulings of December 13, was filed on July 19, 2001. The judgment is not a part of the record, but Father has requested this court take judicial notice of it and the notice of entry of judgment. This request is granted.

No appeal may be taken from an interlocutory judgment unless allowed by statute. (Code Civ. Proc., § 904.1, subd. (a)(1).) Code of Civil Procedure, section 904.1, subdivision

(a)(1) provides in relevant part, “An appeal . . . may be taken from . . . [¶] . . . a judgment, except [] an interlocutory judgment . . . .” However, an appeal may be taken from an order made appealable by the provisions of the Family Code. (Code Civ. Proc., § 904.1, subd. (a)(10).) Family Code section 2025 provides for the appeal of a trial court ruling on bifurcated issues prior to the final judgment, but only where the trial court has certified that an appeal is appropriate. No such certification was obtained in this case.

Nonetheless, we must liberally construe a notice of appeal in favor of its sufficiency. (Cal. Rules of Court, rule 1.) Therefore, we shall treat the notice of appeal as a premature notice of appeal from the final judgment filed on July 19, 2001. (Cal. Rules of Court, rule 2(d)(2); *County of El Dorado v. Misura* (1995) 33 Cal.App.4th 73, 77.)

II

Review of Trial Court’s Discretion

Mother argues the trial court abused its discretion in ordering an excessive amount of parenting time to Father and in requiring her to pay for the costs of travel for the minor child. She argues the trial court failed to consider the best interest of the child in ordering parenting time for Father, and

required her to bear the costs of travel in an effort to punish her for exercising her right to move with her child.[1]

a. *Standard of Review.*

"The standard of appellate review of custody and visitation orders is the deferential abuse of discretion test. [Citation.] The precise measure is whether the trial court could have reasonably concluded that the order in question advanced the 'best interest' of the child. We are required to uphold the ruling if it is correct on any basis, regardless of whether such basis was actually invoked. [Citation.]" (*In re Marriage of Burgess* (1996) 13 Cal.4th 25, 32.)

b. *Parenting Time.*

Because no statement of decision was requested in this case, we imply the findings necessary to support the judgment. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) We therefore assume the trial court found the visitation schedule it ordered was in the best interest of the child. The issue we must resolve is whether this implied finding was supported by

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[1] Mother's opening brief makes numerous assertions of fact that are not supported by any citation to the record. The statement of any factual matter must be supported by an appropriate reference to the record. (Cal. Rules of Court, rule 14(a).) We have disregarded any factual assertion not supported by an appropriate record citation. (*Warren-Guthrie v. Health Net* (2000) 84 Cal.App.4th 804, 808, fn. 4.)

substantial evidence so as to constitute a rational exercise of the trial court's discretion. (*In re Marriage of Roe* (1993) 18 Cal.App.4th 1483, 1488, disapproved on another point in *In re Marriage of Burgess*, *supra*, 13 Cal.4th at p. 38, fn. 10.)

On this record the trial court could have properly concluded the visitation schedule ordered was in the child's best interest. The testimony of Father and the paternal grandmother showed the minor child enjoyed a close relationship with her father and paternal grandparents. The court could have reasonably concluded it was in the child's best interest to continue this close relationship. The pre-existing visitation schedule gave Father parenting time of approximately 25 percent. The visitation schedule from which Mother appeals also gives Father approximately 25 percent parenting time.

Mother claimed at trial that it was important the child have a relationship with Father, and stated she was willing to facilitate the relationship in whatever way she could if she moved to Chicago. Mother agreed that Father was a good parent, and that the child needed to spend time with her paternal grandparents.

It is the public policy of this state to have children maintain frequent and continuing contact with both parents after a marriage dissolution. (Fam. Code, § 3020, subd. (b).) The visitation schedule ordered by the court attempts, to the extent

possible, to maintain the existing level of visitation for Father. This was not an abuse of discretion.

Mother complains the court did not consider the welfare of the child when it ordered her to spend 10 weeks during the summer with Father, even though the child had never spent more than two consecutive days away from Mother. However, Mother points to no evidence that the child would suffer from extended periods away from her. Moreover, Mother must have realized that a move of the distance she contemplated would necessitate many extended visitations. Indeed, she proposed at trial that the child spend half the summer with Father, as well as all holidays.

Mother also claims the trial court abused its discretion by discussing the requirement of necessity for the move and "making the order based on the perceived failure to prove that the move was necessary."

In *In re Marriage of Burgess*, *supra*, 13 Cal.4th at pages 31-32, the Supreme Court held a parent who had sole physical custody and wanted to relocate with the child did not need to prove the move was reasonably necessary. The custodial parent has a presumptive right to move if it is consistent with the child's best interest. (*Ibid*.)

However, the court must still consider whether the parent seeking to relocate is doing so for the purpose of frustrating

the other parent's contact with the child. (*In re Marriage of Burgess, supra*, 13 Cal.4th at p. 36, fn. 5.) Such bad faith conduct is material to a determination of what custody arrangement is in the child's best interest. (*Id.* at p. 36, fn. 6.) Thus, the court, in this case, did not abuse its discretion in discussing Mother's motives for relocating.

Mother claims the trial court's order lacks any discussion of the child's best interest, and generally complains that the order casts her in the worst light, and Father in the best light possible. She also complains that the visitation schedule is inconvenient, and that the court failed to consider her allegations of abuse by Father. As previously explained, we assume the trial court made whatever findings were necessary to support the order and we indulge all presumptions in favor of the judgment. The evidence regarding the character and fitness of both parents was conflicting, as was the evidence of Father's purported verbal or physical abuse. This record contains nothing to overcome the presumptions in favor of the judgment.

c. *Travel Costs.*

Mother argues the trial court's requirement that she bear the entire cost of transporting the child to visit Father is an attempt to punish her for relocating or to prevent her from relocating.

During the trial, the court asked Mother if she would be willing and able to pay the cost of transportation. Mother responded, “I would be willing to do that.” The court asked if she would be able to do it. She responded, “It’s cheaper than this divorce has been.” Mother testified the cost of a round trip ticket to Chicago was $200.

Mother’s representations to the court constitute a stipulation or acquiescence to the trial court’s ruling. Mother is bound by the rule that she has waived the error by her conduct or stipulation in the lower court. (*Cushman v. Cushman* (1960) 178 Cal.App.2d 492, 498.) By agreeing at trial under questioning from the court to pay the entire cost of transportation, she may not now complain.

In any event, the court did not abuse its discretion. One of the trial court’s biggest concerns about Mother’s request to relocate was that neither party would be willing to afford the cost of transportation in order to maintain continuing contact with the non-custodial parent. The trial court’s order allowing the relocation was based on the implied finding the move would not be detrimental to the child’s best interests, which was in turn based on an implied finding that the parties could afford to transport the child between Illinois and California to maintain continuing contact with Father. The court made an implied finding that Mother was able and willing to pay for the

transportation. This finding is supported by Mother's own testimony. The court did not abuse its discretion.

DISPOSITION

The judgment is affirmed. Respondent shall recover his costs on appeal. (Cal. Rules of Court, rule 26(a)(1).)

BLEASE, Acting P.J.

We concur:

NICHOLSON, J.

MORRISON, J.